

**Editor's note: Reconsideration denied by orders dated Sept. 1, 1972 and May 14, 1974; Appealed -- aff'd, Civ. No. 616-72 (D.D.C. Oct. 22, 1974), aff'd, No. 74-2088 (D.C. Cir. Dec. 23, 1975) 527 F.2d 838**

KERR McGEE CORPORATION  
CABOT CORPORATION  
FELMONT OIL CORPORATION  
CASE-POMEROY OIL CORPORATION

IBLA 71-172

Decided June 5, 1972

Appeal from Bureau of Land Management decision rejecting high bid for oil and gas lease on Outer Continental Shelf lands, OCS-G 2016.

Affirmed.

Contracts: Formation and Validity: Bid Award -- Oil and Gas Leases:  
Competitive Leases -- Outer Continental Shelf Lands Act: Oil  
and Gas Leases.

Where an invitation to submit competitive bids for oil and gas leases reserves the right and discretion to reject any and all bids, regardless of the amount offered, and the high bid for a particular tract is much less than the government's estimated value of the tract, the high bid may properly be rejected for the reason of inadequacy of the cash bonus offered.

APPEARANCES: Willard P. Scott, vice president and general counsel, Kerr McGee Corporation; Peter J. Nickles, Robert F. Hill, Covington & Burling, for the appellants.

OPINION BY MR. HENRIQUES

Kerr McGee Corporation, Cabot Corporation, Felmont Oil Corporation and Case-Pomeroy Oil Corporation have appealed from rejection of their joint bid for Tract 2124, Block 571, West Cameron Area, South Addition, Louisiana, OCS-G 2016, offered December 15, 1970, at an oil and gas lease sale pursuant to the Outer Continental Shelf Lands Act, 43 U.S.C. § 1337 (1970). The decision by the manager, Outer Continental Shelf office, Bureau of Land Management, stated:

The Notice of this sale published in the Federal Register Vol. 35, No. 205, Pages 16417-16419 inclusive, contained a statement that "The United States reserves the right and discretion to reject any and all bids, regardless of the amount offered."

In accordance with this specific reservation the bid referred to above is hereby rejected for inadequacy of the cash bonus bid.

The appellants concede that the manager has discretionary authority to reject bids as that right was expressly reserved in the sale notice, but they contend that rejection of their high bid for Tract 2124 exceeds the bounds of what is reasonable, just and proper under the circumstances and amounts to an abuse of discretion.

They argue that the December 1970 sale, the first involving OCS land offshore from Louisiana in 3-1/2 years, was expressly ordered to provide lands to exploration and development for oil and gas to alleviate the present gas supply shortages in this country consonant with mandate of the Congress, expressed in the Act, supra. They state that Tract 2124 is in a high wildcat area, situated approximately 35 miles from the nearest production in the East Cameron fields surrounding blocks 245 and 265. They state that only geophysical data compiled by contracting geophysical exploration companies was available to the Government and to the prospective bidders for their respective evaluations of the tract. In light of the bids made by responsible companies for Tract 2124, it is obvious, in opinion of the appellants, that the Department's evaluation of the tract is not the realistic fair market value of the tract.

The appellants suggest the integrity of the competitive bidding process must be maintained in the public interest, citing Superior Oil Co. v. Udall, 409 F.2d 1115 (D.C. Cir. 1969). In consequence, they argue, a high bid from a responsible qualified bidder for OCS lands should not be arbitrarily rejected, and in the present case, acceptance of the appellants' high bid would not violate the Department's policy that no publicly-owned resource shall be disposed of at less than fair market value as determined at the time of sale.

The record shows that the Tract 2124 was considered to be part of a single prospect consisting of Tracts 2120, 2122, 2123, 2124 and 2125, adjacent to another prospect consisting of Tracts 2129, 2130, 2131 and 2132. These tracts, as a group, are about 110 miles from shore and are 35 miles southwest from the closest existing pipeline. None of these tracts had ever been leased for oil and gas under the OCS Act.

Prior to the sale, the Government determined the risk value of Tract 2124 to be \$1,343,627, and the risk-free value to be

\$4,477,843. <sup>1/</sup> The bid of the appellants was \$711,150, highest of 8 bids for the tract. The high bid was 52 percent of the risk value and only 16 percent of the risk-free value. At the sale, the high bids for the tracts adjoining and cornering upon Tract 2124 ranged from \$3,838,000 to \$19,170,100, being from 51 percent to 730 percent of the risk-free values set by the Government for these tracts.

The bid per acre for Tract 2124 was \$142, whereas the per acre bids for the tracts immediately adjacent ranged from \$702 upward to \$5,674. This great disparity in high bids is a sufficient reason to question the adequacy of the high bid for Tract 2124.

Before the sale, the Geological Survey had characterized Tract 2124 (and the adjacent tracts) as being rank wildcat acreage remote from producing areas. The structural configuration had been defined by geophysical methods with the sand configuration being extrapolated into the area on the basis of regional stratigraphic and paleontologic information. There is good knowledge of the structural configuration and size. The value for oil and gas has been derived from geological and engineering studies of similar producing fields in other areas on OCS lands.

Following the sale, the O&G Supervisor on December 16, 1970, recommended to the manager, OCS office, that the high bid for Tract 2124 be rejected, giving as a specific reason the following:

Tract No. 2124 - This tract is on a five block prospect in the West Cameron area. Three north-south and three east-west seismic lines are available for geophysical control on the structure. Our interpretation shows a seismic anomaly in the southwest portion of tract 2124 and extending into West Cameron Block 570 to the east [sic]. Our technical people, therefore, feel the tracts have more potential than indicated by the high bid received.

By the terms of the bid invitation, as well as the governing regulation, 43 CFR 3302.5, the right was reserved to the authorized

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<sup>1/</sup> The "risk-free value" may be defined as the total possible recoverable resources, based on estimates by the government's experts. The "risk value" is obtained from the risk-free value by applying a factor based on the reliability of all the data used in determining the risk free value and the discounted rate of the cash flow over the expected period of exploitation of the lease.

officer to reject any and all bids, regardless of the amount offered. <sup>2/</sup> thus, the Government is not bound to accept any bid which might be considered inadequate, especially one which is merely a fraction of the resource value assigned to the tract by the Government's experts. The Secretary (or his delegate) is not required to show that a bid is inadequate, unreasonable, or lacking in good faith in order to exercise his discretion in determining whether a bid should be accepted or rejected. It is sufficient that he feels it is not in the public interest to accept a given bid, and the record is devoid of any indication that the rejection is arbitrary or capricious. Humble Oil & Refining Co., 4 IBLA 72 (1971); Humble Oil & Refining Co., A-30906 (December 5, 1967); Pan American Petroleum Corp., A-29510 (August 13, 1963).

The appellants have referred to Superior Oil Co. v. Udall, *supra*. That case arose from an OCS lease sale where, although the high bidder for a tract had not followed faithfully and scrupulously the Department's regulations, the Department had attempted to accept the greater amount of money from the highest bidder and to issue a lease to that bidder. The Court held that the second high bidder was the "highest qualified responsible bidder". In its discussion of the propriety of this Department issuing a lease to the second bidder, Superior, the Court said:

The only remaining question is the propriety of the District Court's ordering the Secretary to issue the lease to Superior. Section 8 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1337(a) (1964), provides that the Secretary of the Interior "is authorized to grant to the highest responsible qualified bidder by competitive bidding \* \* \*." (emphasis added). The use of the word "authorized" indicates that the Secretary has discretion in granting leases and is not required to do so. He might for example have rejected all bids on the ground that none was in the public interest, but if this had been indicated it was a decision which he was obliged to make at the time, not as an afterthought with the result that Union and other bidders would have "another bite at the apple." 409 F.2d at 1121.

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<sup>2/</sup> The regulation provides: The United States reserves the right and discretion to reject any and all bids received for any tract, regardless of the amount offered.

The situation in Superior is easily distinguishable from that present in the case at bar. Here, at the conclusion of the sale and not as an afterthought, the Department's authorized officer rejected all bids for Tract 2124. The manager did exactly what the Court, in Superior, had said he could do in the exercise of his statutory discretion. Superior, then, supports the authority of the Secretary (or his delegate) to reject all bids for an oil and gas lease on a tract of OCS land where none of the bids provides an adequate cash bonus.

From our review of the records and documents used by the manager in arriving at his decision relative to Tract 2124, we find no evidence of arbitrary action or abuse of discretion in determining that the high bid of Kerr McGee, et al., was inadequate in amount, and that to accept it would not be in the public interest.

In view of our conclusions no useful purpose would be served by granting the request of the appellants for oral argument. Accordingly, the request for oral argument is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

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Douglas E. Henriques, Member

We concur:

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Martin Ritvo, Member

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Edward W. Stuebing, Member

